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BEFORE THE  
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34914

DESERTXPRESS ENTERPRISES, LLC-  
PETITION FOR DECLARATORY ORDER

**RESPONSE OF THE IBT RAIL CONFERENCE TO  
JOINT PETITION OF PURPORTED INTERVENERS TO FILE REPLY TO REPLIES**

The International Brotherhood of Teamsters Rail Conference and its affiliated organizations, the Brotherhood of Locomotive Engineers and Trainmen Division/IBT, and the Brotherhood of Maintenance of Way Employees Division/IBT, ("Rail Conference") oppose the motion of the putative interveners, California -Nevada Super Speed Train Commission ("CNSSTC") and American Magline Group ("Magline") to file a reply to the replies of DesertXpress and the Rail Conference.

As CNSSTC and Magline note, Board rules actually prohibit replies to replies. They nonetheless note that there have been cases when the Board has allowed parties to reply to replies. Putting aside the question of whether CNSSTC and Magline have provided sufficient reason for the Board to ignore its normal rules, the motion should be denied because CNSSTC and Magline are not actually parties to this case. CNSSTC and Magline have only sought to intervene in this case and they have done so not only very late, but long after the Board issued its decision. Whatever considerations might have applied in cases where the Board allowed parties to file replies to replies, this is an entirely different situation where CNSSTC and Magline seek intervene in an already closed case where they were not parties in the first place.

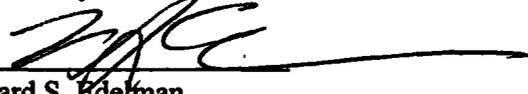
As the Rail Conference has argued, CNSSTC and Magline should not be allowed to

intervene in this proceeding; they are woefully late, and they have no valid excuse for their prior lack of initiative.<sup>1</sup> CNSSTC and Magline should certainly not be allowed to file an additional brief in contravention of the Board's rules. However, if the Board nonetheless allows CNSSTC and Magline to file a reply to the replies, it should allow the actual parties to the case to respond to the CNSSTC/ Magline second filing, since there is no reason why a non-party should be allowed more briefing rights than actual parties.

### CONCLUSION

For the foregoing reasons, the CNSSTC/ Magline motion for leave to file a reply to the DesertXpress and IBT Rail Conference replies should be denied.

Respectfully submitted,

/s/   
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Dated: May 20, 2009

<sup>1</sup> The CNSSTC/Magline effort to bolster their explanation for their prior inaction is both procedurally improper (a reply to a reply) and facially inadequate. That CNSSTC and Magline lacked sufficient motive to join this proceeding at the time it was an open case to invest attorney time in stating their position because they were uncertain about their own long term prospects is plainly not a viable justification for failure to participate in a proceeding that they believed implicated their interests. Their argument is somewhat akin to a shipper on a line served by a rail carrier involved in a line sale failing to participate in Board proceedings on the sale and then seeking to intervene and reopen the decision, stating that the shipper did not care much at the time of the proposed sale because it had a small facility on the line and plans for expansion were uncertain, but subsequently financing came through and the facility was going to expand so it developed a stronger interest in service on the line.

## **CERTIFICATE OF SERVICE**

I hereby certify that I have caused the foregoing Response of the IBT Rail Conference to Joint Petition of Purported Interveners to File Reply to Replies to be served on the following by overnight delivery on this 20th day of May, 2009.

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